

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 Timothy W. Hill, derivatively on behalf of
Nominal Defendant Juniper Networks, Inc.,

NO. C 06-03396 JW

11 Plaintiff,
12 v.

Related Case Nos. C 06-03430 JW; C 06-
03446 JW; C 06-03452 JW; C 06-03708 JW;
C 06-04717 JW; C 06-04984 JW.

13 Marcel Gani, et al.,

**ORDER CONSOLIDATING RELATED
DERIVATIVE CASES AND
APPOINTING LEAD PLAINTIFFS AND
LEAD COUNSEL**

14 Defendants,

15 and

16 Juniper Networks, Inc.,

17 Nominal Defendant.

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19 **I. INTRODUCTION**

20 There are currently seven related shareholders' derivative actions (the "Related Derivative
21 Cases") on behalf of nominal defendant Juniper Networks, Inc. ("Juniper") pending before this
22 Court.¹ Presently before the Court are a number of motions to consolidate the Related Derivative
23 Cases and to appoint lead plaintiff and lead counsel. Subsequent to the filing of these motions, the
24 movants filed a stipulation indicating there was agreement on who should be appointed lead plaintiff

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26 ¹ The Related Derivative Cases are: Hill v. Gani, et al., 06-03396 JW (filed May 24, 2006);
Shemtov v. Kriens, et al., 06-03430 JW (filed May 26, 2006); Rizzo v. Sindhu, et al., 06-03446 JW
(filed May 26, 2006); Kaya v. Gani, et al., 06-03452 JW (filed May 26, 2006); Employer-Teamsters
Local Nos. 175& 505 Pension Trust Fund v. Kriens, et al., 06-03708 JW (filed June 9, 2006);
Indiana State District Council of Laborers and HOD Carriers Pension Fund v. Kriens, et al., 06-
04717 JW (filed Aug. 3, 2006); and Buckley v. Kriens, et al., 06-04984 JW (filed Aug. 17, 2006).

1 and lead counsel. The Court held a hearing on October 16, 2006. Based on the papers filed to date
2 and arguments of counsel at the hearing, the Court ORDERS (1) the Related Derivative Cases
3 consolidated; (2) Employer-Teamsters Local Nos. 175 & 505 Pension Trust Fund, Indiana State
4 District Council of Laborers and HOD Carriers Pension Fund, and Timothy W. Hill appointed Lead
5 Plaintiffs; and (3) Lerach Coughlin Stoia Geller Rudman & Robbins LLP and Schiffrin & Barroway
6 LLP appointed Lead Counsel.

7 **II. BACKGROUND**

8 On May 24, 2006, Timothy W. Hill (“Hill”) filed the first shareholders’ derivative complaint
9 on behalf of Juniper alleging executives illegally diverted millions of dollars to themselves through a
10 stock option backdating scheme. Subsequent to Hill’s filing, Rahmi Kaya (“Kaya”), Levi Shemtov
11 (“Shemtov”), Frank Rizzo (“Rizzo”), the Employer-Teamsters Local Nos. 175 & 505 Pension Trust
12 Fund (the “Teamsters Fund”), the Indiana State District Council of Laborers and HOD Carriers
13 Pension Fund (the “Laborers Fund”), and Diane Buckley (“Buckley”) filed similar actions on behalf
14 of Juniper. The Court found that these derivative actions, in addition to two securities class action
15 suits which also arose from stock option backdating at Juniper, were related within the meaning of
16 Civil Local Rule 3-12(a). (See Related Case Order, Docket Item No. 47.)

17 On June 27, 2006, Hill filed a motion to consolidate the related derivative actions pending at
18 the time and to appoint lead plaintiff and counsel. (See Docket Item No. 11.) On August 4, 2006,
19 the Teamsters Fund and Laborers Fund collectively filed a motion to consolidate the related
20 derivative actions pending at the time and to appoint lead plaintiffs and counsel. (See Docket Item
21 No. 25.) On August 14, 2006, Shemtov also filed a motion to consolidate the related derivative
22 actions pending at the time.² (See Docket Item No. 34.) On August 21, 2006, Kaya filed a motion
23 in support of consolidation but in opposition to the previously filed motions to appoint lead plaintiff
24 and counsel. (See Docket Item No. 36.)

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27 ² Shemtov also moved to appoint co-lead counsel, but this motion was later withdrawn. (See
Docket Item No. 35.)

1 On August 31, 2006, all the plaintiffs in the Related Derivative Cases (the “Derivative
2 Plaintiffs”) filed a stipulation indicating they were in agreement that (1) the Related Derivative
3 Cases should be consolidated; (2) the Teamsters Fund, the Laborers Fund, and Hill should be
4 appointed Lead Plaintiffs; and (3) Lerach Coughlin Stoia Geller Rudman & Robbins LLP (“Lerach”)
5 and Schiffrian & Barroway LLP (“Schiffrian”) should be appointed Lead Counsel. (See Docket Item
6 No. 43.)

III. DISCUSSION

8 The Derivative Plaintiffs seek consolidation of the Related Derivative Cases and
9 appointment of lead plaintiff and lead counsel. The Court must determine whether the cases should
10 be consolidated before it considers the appointment of lead plaintiff and lead counsel.

A. Consolidation of the Related Derivative Cases

12 A district court has broad discretion to consolidate actions involving “common issues of law
13 or fact.” Fed. R. Civ. P. 42(a); Investors Research Co. v. U.S. Dist. Ct. for Cent. Dist. of Cal., 877
14 F.2d 777, 777 (9th Cir. 1989). In exercising its broad discretion to order consolidation, a district
15 court “weighs the saving of time and effort consolidation would produce against any inconvenience,
16 delay, or expense that it would cause.” Huene v. U.S., 743 F.2d 703, 704 (9th Cir. 1984).

17 Here, the Derivative Plaintiffs move for consolidation of the seven currently-pending Related
18 Derivative Cases. Having reviewed the complaints in these actions, the Court concludes they all
19 involve virtually identical factual and legal issues, in particular whether the executives at Juniper
20 breached their fiduciary duties when they backdated stock option grants. Additionally, the
21 complaints involve substantially the same class period as the focus is on stock option grants that
22 were made between 1999 and 2002. Since no party has identified any inconvenience, delay, or
23 expense that would result from consolidation, the Court finds it appropriate to consolidate the
24 Related Derivative Cases.

1 **B. Appointment of Lead Plaintiffs**

2 According to Federal Rule of Civil Procedure 23.1, a plaintiff in a shareholders' derivative
3 action must "fairly and adequately represent the interests of the shareholders or members similarly
4 situated in enforcing the right of the corporation or association." Factors courts have considered in
5 analyzing a plaintiff's fitness to be lead plaintiff include: (1) whether the plaintiff held shares during
6 the relevant time period; (2) whether the plaintiff is represented by capable counsel; and (3) whether
7 the plaintiff is subject to any unique defense that would frustrate appointment. See Horn v. Raines,
8 227 F.R.D. 1, 3 (D. D.C. 2005); Millman v. Brinkley, Nos. 03-cv-3831, 03-cv-3832, 03-cv-0058,
9 2004 WL 2284505, at *3 (N.D. Ga. Oct. 1, 2004).

10 In their stipulation, the Derivative Plaintiffs state they agree that the Teamsters Fund, the
11 Laborers Fund, and Hill should be appointed Lead Plaintiffs. These Plaintiffs have substantial
12 financial stakes in this suit and thus should be more than capable of representing the interests of the
13 corporation and its shareholder base. As the Court does not find any factors counsel against
14 establishing the proposed leadership structure, the Teamsters Fund, the Laborers Fund, and Hill are
15 appointed Lead Plaintiffs.

16 **C. Appointment of Lead Counsel**

17 The Derivative Plaintiffs have also stipulated that Lerach and Schiffrian should be appointed
18 Lead Counsel. Given these firms' experience with similar shareholder actions, the Court finds it
19 appropriate to appoint Lerach and Schiffrian as Lead Counsel.

20 **V. CONCLUSION**

21 The Court ORDERS (1) the Related Derivative Cases consolidated; (2) Employer-Teamsters
22 Local Nos. 175 & 505 Pension Trust Fund, Indiana State District Council of Laborers and HOD
23 Carriers Pension Fund, and Timothy W. Hill appointed Lead Plaintiffs; and (3) Lerach Coughlin
24 Stoia Geller Rudman & Robbins LLP and Schiffrian & Barroway LLP appointed Lead Counsel.

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1 The Clerk shall consolidate these actions. Case 06-03396-JW is the earlier filed action and
2 therefore, shall be the lead case. All future filings shall be filed in 06-03396 and bear the caption:
3 "In Re Juniper Derivative Actions."

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5 Dated: October 19, 2006



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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8 **Dated: October 19, 2006**

Richard W. Wieking, Clerk

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By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

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